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5 UNITED STATES DISTRICT COURT
6 WESTERN DISCTRICK OF WASHINGTON
7 AT TACOMA

8 UNITED STATES OF AMERICA NO. CR 23-5287 DGE
9 Plaintiff
10 v.
11 WAYLAN GRAVES,
12 Defendant

13 Defendant Graves' Motion to Reopen
14 Detention and For Release on Bond
15 Noting Date: November 3, 2023

16 **Motion**

17 Waylan Graves moves to reopen the issue of detention. He seeks release on
18 bond with appropriate conditions.

19 **Facts**

20 The 10/11/23 Indictment charges Mr. Graves with two sets of nearly identical
21 drug/gun related charges in June 2023 and September 2023. In both instances, the
22 Government alleges that he possessed controlled substances (including
23 methamphetamine, fentanyl, etc.) with intent to distribute, and possessed a firearm in
 furtherance of the same. See 18 USC 841(b)(1)(A-C) and 18 USC 924(c). The drug
 counts carry a mandatory 10-year term (Count I), or lesser mandatory term (5 years

1 for Count III) and the firearm counts carry a mandatory consecutive term of 5 years
2 (Counts II and IV).

3 The Government moved for detention, on the grounds that Mr. Graves is a
4 flight risk and danger to the public. It invoked the rebuttable presumption of
5 detention based on the nature of the alleged crimes. See 18 USC 3142(e)(3). At his
6 arraignment on 10/12/23, Mr. Graves stipulated to detention without prejudice
7 because his attorney (Mr. Brennan) had insufficient time to confirm a suitable
8 address for him to be released to. We have since found a suitable address and
9 relayed the contact for the same to USPO Gjefle. This Court entered a detention
10 order without prejudice, based on Mr. Graves stipulation and the Government's
11 reasons as set forth in its motion. See Docket 12.

13 USPO Gjefle prepared an initial Pretrial Services Report prior to the Court
14 hearing and before he had interviewed Mr. Graves (he interviewed Mr. Graves after
15 Court that same day). Items of note include the following:

16 *At the time of Mr. Graves 9/23 arrest, he was on bond for alleged drug
17 trafficking/firearm possession stemming from his 6/23 state case;

18 *at the time of his 9/23 arrest, he allegedly was living in a stolen camper
19 trailer on a known drug compound (see USPS report p. 2);

20 *his criminal history dates to 1990 and includes convictions for assault,
21 forgery, burglary, and controlled substance offenses. This history includes numerous

warrants for court matters where he allegedly failed to appear, including an active warrant (see USPS report, p. 9).

Our Proposal for Release

We propose that Mr. Graves live at a Centralia residence inhabited by his friend of 4+ decades, Ms. Burkhart, whom Mr. Brennan interviewed on 10/23/23. Ms. Burkhart lives with her elderly mother and her brother who is in his 40's. There are no firearms in the house. Ms. Burkhart is eager to help Mr. Graves and will not tolerate drug use or criminal behavior. She notes that there is a treatment facility down the road from her house and she will help Mr. Graves enroll, obtain health insurance, find a job, and have stability in his life. She has also offered to contact Mr. Graves' USPO if he disappears and/or is in violation of the terms of his bond. We further propose GPS monitoring, drug treatment, and regular UA testing.

Discussion

A. The Issue of Detention Should be Reopened.

Title 18 U.S.C. § 3142(f)(2)(B) allows the Court to reopen a detention hearing “if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.” Id. In the instant case, we present new information with regard to a specific

1 proposed release address – the home of Ms. Burkhart. This information was not
2 available to the defense at the arraignment as we had not communicated with Ms.
3 Burkhart to confirm that she was willing/had a suitable home for Mr. Graves to live.
4 We have since done so, making this matter ripe for resolution.

5 **B. The Bail Reform Act of 1984 Generally**

6 When considering whether to detain an individual prior to trial, one must
7 remember that “liberty is the norm, and detention prior to trial is a carefully limited
8 exception.” US v. Salerno, 481 U.S. 739, 755 (1987). The Bail Reform Act of 1984,
9 18 U.S.C. 3141-3151, favors pretrial release over detention. See Federal Procedure,
10 Lawyers Ed. Chapt. 22:1804. “Pretrial detention was intended to be limited to the
11 small, identifiable group of particularly dangerous offenders who pose an especially
12 grave risk to the safety of the community.” Id.

13 The Bail Reform Act offers the Court 4 choices: (1) release on personal
14 recognizance; (2) release with conditions; (3) temporary detention pending
15 revocation of conditional release, deportation, or exclusion; or (4) detention. 18 USC
16 3142(a). As set forth in 18 U.S.C. 3142(b) and (c), the pretrial release of an
17 individual either by bond or by a set of conditions shall occur unless the court
18 determines that “such release will not reasonably assure the appearance of the
19 person...” or will “endanger the safety of the person or the community. Id. “The
20 wide range of conditions which may be imposed when ordering pretrial release
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ensures that very few defendants will be subject to pretrial detention.” See Federal Procedure, Lawyers Ed. Chapt. 22, sect. 1804. “Doubts regarding the propriety of release are to be resolved in favor of the defendant.” Id. at sect. 1804.

In order for the defendant to be detained, the government must show that the defendant (1) is a danger to the community, based on clear and convincing evidence, or that he (2) poses a flight risk, based on a preponderance of the evidence. 18 USC 3142(e-g); US v. Jackson, 823 F.2d 4, 5 (2nd Cir. 1987). Further, the government must show that no combination of conditions may be satisfied to alleviate these risks. See 18 USC 3142(f); US v. Windsor, 785 F.2d 755 (9th Cir. 1986).

Title 18 U.S.C. 3142(e)(3)(A) and (B) creates a rebuttable presumption for detention because Mr. Graves is charged with qualifying offenses. The defendant faces a burden of production to present some evidence that he is neither a flight risk nor a danger. This burden “is not a heavy one to meet.” See Federal Procedure, Lawyers Ed. Sect 22:1855; 1858. The ultimate burden of persuasion remains with the Government, and it cannot merely point to the rebuttable presumption to make its case. Id. at sect. 22:1858 (citing U.S. v. Stricklin, 932 F.2d 1353 (10th Cir. 1991); U.S. v. Volksen, 766 F.2d 190 (5th Cir. 1985).

C. Mr. Graves Should Be Released with Conditions.

We recognize the concerns the Court, the Government and Probation have about release. The USPS report reveals Mr. Graves has a history of failing to appear

1 in court, as well as the more alarming allegation of being on bond for the 6/23
2 incident only to be re-arrested 3 months later for the same alleged conduct. We
3 further recognize Probation's concern about risk of nonappearance (unknown
4 community ties, active warrant), danger (based on nature of the charges) and lack of
5 conditions that can address these concerns. See USPO Report p. 9.

6 The Bail Reform Act, however, offers tools to overcome these concerns.
7 Indeed, section 3142(c)(1)(B) offers 14 examples of restrictions the Court may
8 impose when releasing an individual. Our proposal incorporates many of them.
9 As to Probation's concerns about the nature of the allegations, Mr. Graves is
10 presumed innocent. See 18 USC 3142(j); US v. Motamedi, 767 F.2d 1403, 1408
11 (9th Cir. 1985) ("[T]he weight of the evidence is the least important of the various
12 factors" under 18 USC 3142(g)).

14 There are conditions that may be imposed to ensure he is not a flight
15 risk/danger, starting with stable housing as offered by Ms. Burkhart. She does not
16 live in a drug compound (in contrast to the different residence referenced in the
17 USPS report p. 2 vis a vis his 9/23 arrest) and advises Mr. Brennan she will tolerate
18 no illegal behavior/drug use at her home. Indeed, while she has a drug conviction
19 from roughly 20 years ago, she is a role model for Mr. Graves and illustrates how
20 one can turn life around and thrive. Probation's concerns about Mr. Graves'
21 unknown community ties (USPS report p. 9) are satisfied given his close friendship

1 with Ms. Burkart (as well as other ties referenced in his post-arraignement interview
2 with USPO Gjefle). Further conditions, such as GPS monitoring (and active
3 involvement with his attorneys) will ensure Mr. Graves does not miss any court
4 appearances in this case. As to his pending warrant, a condition of release can
5 include an instruction to appear in court for that warrant. Finally, drug
6 treatment/UA testing will ensure Mr. Graves remains sober, which seems to be the
7 critical part of his remaining compliant with his bond and being crime free.
8

Conclusion

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10 We are able to overcome the presumption of detention and the concerning
11 aspects of the USPS report by proposing release with rigorous conditions. This
12 result furthers the Bail Reform Act's goal of pretrial release for defendants presumed
13 to be innocent.

14 Respectfully submitted this date.

15 By: /s/Phil Brennan* _____
16 Phil Brennan
17 Natalie Findley-Wolf
18 Attorneys for Mr. Graves; Date: 10/24/23

19 Certificate of Delivery
20 On this date I emailed a copy of this motion to USPO Gjefle
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